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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2027

MARK CHARLES WINEKOFF
8610 Santa Rosa Road
Atascadero, California 93422

A C C U S A T I O N

Respiratory Care Practitioner License No. 4041

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 7, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 4041 to Mark Charles Winekoff (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references

1 are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “ . . .

12 “(d) Conviction of a crime that substantially relates to the qualifications, functions,
13 or duties of a respiratory care practitioner. The record of conviction or a certified copy
14 thereof shall be conclusive evidence of the conviction. . . .”

15 7. Section 3750.5 of the Code states:

16 “In addition to any other grounds specified in this chapter, the board may deny,
17 suspend, or revoke the license of any applicant or license holder who has done any of the
18 following:

19 “ . . .

20 “(b) Used any controlled substance as defined in Division 10 (commencing with
21 Section 11000) of the Health and Safety Code. . . .

22 “ . . .

23 “(d) Been convicted of a criminal offense involving the consumption or
24 self-administration of any of the substances described in subdivisions (a) and (b), or the
25 possession of, or falsification of a record pertaining to, the substances described in
26 subdivision (a), in which event the record of the conviction is conclusive evidence thereof.
27 . . .”

1 8. Section 3752 of the Code states:

2 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
3 made to a charge of any offense which substantially relates to the qualifications, functions,
4 or duties of a respiratory care practitioner is deemed to be a conviction within the meaning
5 of this article. The board shall order the license suspended or revoked, or may decline to
6 issue a license, when the time for appeal has elapsed, or the judgment of conviction has
7 been affirmed on appeal or when an order granting probation is made suspending the
8 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
9 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
10 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment.”

12 9. Section 490 of the Code states:

13 “A board may suspend or revoke a license on the ground that the licensee has been
14 convicted of a crime, if the crime is substantially related to the qualifications, functions, or
15 duties of the business or profession for which the license was issued. A conviction within
16 the meaning of this section means a plea or verdict of guilty or a conviction following a
17 plea of nolo contendere. Any action which a board is permitted to take following the
18 establishment of a conviction may be taken when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal, or when an order granting probation
20 is made suspending the imposition of sentence, irrespective of a subsequent order under the
21 provisions of Section 1203.4 of the Penal Code.”

22 10. California Code of Regulations, Title 16, section 1399.370, states:

23 “For the purposes of denial, suspension, or revocation of a license, a crime or act
24 shall be considered to be substantially related to the qualifications, functions or duties of a
25 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
26 perform the functions authorized by his or her license or in a manner inconsistent with the
27 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
28 those involving the following:

1 “ . . .

2 “(c) Conviction of a crime involving driving under the influence or reckless driving
3 while under the influence. . . .”

4 COST RECOVERY

5 11. Section 3753.5, subdivision (a) of the Code states:

6 "In any order issued in resolution of a disciplinary proceeding before the board, the
7 board or the administrative law judge may direct any practitioner or applicant found to
8 have committed a violation or violations of law to pay to the board a sum not to exceed the
9 costs of the investigation and prosecution of the case."

10 12. Section 3753.7 of the Code states:

11 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
12 include attorney general or other prosecuting attorney fees, expert witness fees, and other
13 administrative, filing, and service fees."

14 13. Section 3753.1, subdivision (a) of the Code states:

15 "An administrative disciplinary decision imposing terms of probation may include,
16 among other things, a requirement that the licensee-probationer pay the monetary costs
17 associated with monitoring the probation."

18 CONTROLLED SUBSTANCE

19 14. Methamphetamine is a Schedule II controlled substance pursuant to Health
20 and Safety Code Section 11055.

21 FIRST CAUSE FOR DISCIPLINE

22 (Conviction of a Crime)

23 15. Respondent is subject to disciplinary action under sections 3750,
24 subdivision (d), 3750.5, subdivision (d), 3752, and 490 of the Code, and California Code of
25 Regulations, Title 16, section 1399.370, subdivision (c), in that he was convicted of a crime
26 substantially related to the qualifications, functions or duties of a respiratory care practitioner. The
27 circumstances are as follows:

1 A. On or about April 30, 2005, respondent was driving his vehicle erratically
2 and almost struck two pedestrians. A Pismo Beach police officer made an enforcement
3 stop. Upon contact with respondent, the officer noticed that respondent spoke rapidly, and
4 exhibited body tremors and sweating. While conducting a body search, the officer located
5 a pouch which contained a clear plastic baggy of methamphetamine and a glass smoking
6 pipe with a residue of burnt methamphetamine. Respondent admitted the items belonged to
7 him. He stated he had smoked some methamphetamine from the glass pipe at his residence
8 earlier that day. He also stated he started smoking methamphetamine two years ago, and
9 he smokes methamphetamine twice a week. Respondent admitted he has a
10 methamphetamine addiction.

11 B. On May 6, 2005, a complaint was filed against respondent in a criminal
12 proceeding entitled *People v. Mark Charles Winekoff*, in Superior Court, San Luis Obispo
13 County, Case Number M000372242. He was charged with driving under the influence of
14 alcohol or drugs, a violation of Vehicle Code section 23152, subdivision (a), a
15 misdemeanor (count 1), use/under the influence of a controlled substance, a violation of
16 Health and Safety Code section 11550(a), a misdemeanor (count 2), possession of a
17 controlled substance, methamphetamine, a violation of Health and Safety Code section
18 11377(a), a misdemeanor (count 3), and possession of controlled substance paraphernalia,
19 a violation of Health and Safety Code section 11364, a misdemeanor (count 4).

20 C. On September 14, 2005, respondent was convicted by a plea of nolo
21 contendere to the crime of driving under the influence of alcohol or drugs, a violation of
22 Vehicle Code section 23152, subdivision (a) (count 1). He was placed on probation for
23 three years. The terms and conditions of his probation included payment of \$1,570.00 in
24 fines, completion of a driving while under the influence first offender program, and
25 restriction of his driving privilege for 90 days. Counts 2, 3 and 4 of the complaint were
26 dismissed.

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SECOND CAUSE FOR DISCIPLINE

(Use of a Controlled Substance)

16. Respondent is subject to disciplinary action under section 3750.5, subdivision (b) of the Code in that he used the controlled substance methamphetamine. The facts and circumstances, set forth in Paragraph 15 of this Accusation, are incorporated herein by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 1. Revoking or suspending Respiratory Care Practitioner License Number 4041 issued to Mark Charles Winekoff;
- 2. Ordering Mark Charles Winekoff to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
- 3. Taking such other and further action as deemed necessary and proper.

DATED: May 18, 2006

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant